



# **Strip Clubs in Portland, Oregon and Atlanta, Georgia:**

## **The Tension Between First Amendment Free Speech & Crime Related Secondary Effects**

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### **Abstract:**

This paper investigates the adult entertainment industry, particularly strip clubs, for two cities in the United States. These are Portland, Oregon and Atlanta, Georgia. Portland and Atlanta rank first and fifth, respectively, on a list of cities with the highest strip clubs per 100,000 residents. State constitutions and legal precedent are outlined to provide reasons for these rankings and help distinguish between how Oregon and Georgia allow cities to regulate adult entertainment establishments. A tension exists between these establishments' First Amendment right to free speech and planners' and cities' desire to prevent crime-related secondary effects. Key studies investigating the relationship between adult entertainment and crime will be reviewed. Additionally, an analysis of strip clubs and crime in Atlanta and Portland neighborhoods will help planners make recommendations to cities wishing to regulate adult entertainment in a way that will survive legal review.

## Adult Entertainment Is Here To Stay

Whether you are a frequent visitor of adult entertainment businesses, or find them morally reprehensible, it is clear that these businesses are here to stay. The adult entertainment industry has a staggering economic impact in the United States grossing \$15 billion annually.<sup>1</sup> Stated simply, sex sells. Commercials deploy attractive people to use products, the most popular music videos have scantily dressed woman and men dancing provocatively, and sports employ sideline dancers and cheerleaders as part of the overall game experience. In the City of Atlanta, the adult industry's \$240 million in sales is greater than the economic impact of the Hawks, Falcons, and Braves combined.<sup>2</sup> According to the Association of Club Executives, a national trade association for club owners and professionals, there are over 500,000 people employed in 3,829 cabarets in the United States. An average adult entertainment club in large metropolitan areas can expect to gross between \$10 and \$20 million per year. Even clubs in small rural areas average over \$1 million in sales per year.<sup>3</sup>

Nude dancing in strip clubs, and other forms of adult entertainment, are considered forms of free speech and are therefore protected by the First Amendment. As a result, simply wishing adult entertainment to go away won't provide communities or planners with effective strategies to deal with these businesses and their possible

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<sup>1</sup> West, Darrell M. and Marion Orr. "Morality and Economics: Public Assessments of the Adult Entertainment Industry." *Economic Development Quarterly* 21(4): 315-324.  
<http://www.insidepolitics.org/AdultEntertainment.pdf>.

<sup>2</sup> Spencer, Angelina. "The Erotic Economy." *RCI Hospitality*.  
<http://www.rcihospitality.com/356/pressrelease.aspx>.

<sup>3</sup> Ibid.

secondary effects on communities. Secondary effects can include increased crime, decreased property values, and traffic congestion.<sup>4</sup>

Setting moral arguments aside, planners must know how their state laws affect the regulation and restrictions of adult entertainment establishments. Different case law precedent can lead to different levels of regulation. Two different states, and in particular, two cities will be studied in this report: the City of Portland, Oregon and the City of Atlanta, Georgia.

**Part one** of this report will outline legal cases relating to the restrictions and ordinances placed on these businesses in Oregon and Georgia.

**Part two** will review relevant crime-related secondary effects studies conducted by cities and independent researchers.

**Part three** of this report will involve an analysis of strip clubs and crime within Portland and Atlanta at the neighborhood level (census block). Possible correlations between the presence of strip clubs and crime will be explored.

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<sup>4</sup> Hudson, David. May 2002. "Adult Entertainment and the Secondary Effect Doctrine." *First Amendment Center Publication*.

## Part One: The Legal Framework

An article recently published by *Priceonomics* discussed how Portland has become the strip club capital of the world. An analysis of the top 50 cities with the most strip clubs per 100,000 capita showed that Portland ranked at the top of the list, with 8.860 clubs per 100,000 citizens. Atlanta was number five on the list with 6.699 clubs per 100,000 citizens.<sup>5</sup> The table below shows a portion of this analysis, ranking the top 20 cities with the highest strip clubs per 100,000 capita.

<h1>America's Strippiest Cities</h1> <p>The 50 U.S. cities with the highest number of strip clubs per capita</p>				
Rank	City, State	Population	# of Strip Clubs	Per 100,000 Capita
1	Portland, Oregon	609,456	54	8.860
2	Tampa, Florida	352,957	28	7.932
3	Fayetteville, North Carolina	204,408	15	7.338
4	Miami, Florida	417,650	20	7.183
5	Atlanta, Georgia	447,841	30	6.699
6	New Orleans, Louisiana	378,715	23	6.073
7	Las Vegas, Nevada	603,488	34	5.634
8	Cleveland, Ohio	390,113	20	5.127
9	Detroit, Michigan	688,701	32	4.646
10	Newark, New Jersey	278,427	12	4.310
11	Baltimore, Maryland	622,104	26	4.179
12	Honolulu, Hawai'i	347,884	14	4.024
13	Greensboro, North Carolina	279,639	10	3.576
14	Toledo, Ohio	282,313	10	3.542
15	Orlando, Florida	255,483	9	3.523
16	Richmond, Virginia	214,114	7	3.269
17	Houston, Texas	2,195,914	65	2.960
18	Louisville, Kentucky	609,893	18	2.951
19	Rochester, New York	210,358	6	2.852
20	Corpus Christi, Texas	316,381	9	2.845

Source: *Priceonomics Data Services*; Data: [TUSCL](#), Yelp, Google  
<https://priceonomics.com/why-does-portland-have-so-many-strip-clubs/>

### Why does Portland rank at the top of the list?

<sup>5</sup> Crockett, Zachary. June 17, 2015. "Why Does Portland Have So Many Strip Clubs." *Priceonomics*.  
<http://priceonomics.com/why-does-portland-have-so-many-strip-clubs/>.



Portland has many niche adult entertainment establishments. For example, Casa Diablo is the world's first vegan club. At Casa Diablo, patrons can enjoy vegan food of their liking while watching

dancers perform on stage in non-animal based lingerie.

Local residents have stated for over 20 years that Portland has more strip clubs than other city in America. The analysis conducted by *Priceonomics* backs up this assertion.



Portland has a strip club for every 11,286 of its citizens.<sup>6</sup> This is a higher density of clubs than found in Las Vegas, New Orleans, San Francisco, and Tampa, cities that are more notorious for their strip clubs.<sup>7</sup>

Portland's first adult entertainment business was established in 1954, when Roy Keller purchased a failing piano bar and began allowing exotic dancers to perform during intermissions. Word spread across town and soon Keller's piano bar, which he later named Mary's Club, had lines of people waiting to get a glimpse of the new show. By 1965, Keller had turned the bar into a full-time topless bar, becoming the city's first of

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<sup>6</sup> Image Source: Crockett, Zachary. June 17, 2015. "Why Does Portland Have So Many Strip Clubs." *Priceonomics*. <http://priceonomics.com/why-does-portland-have-so-many-strip-clubs/>.

<sup>7</sup> Ibid.

its kind. After the success of Mary's Club, other topless-only establishments and live sex shows started popping up around Portland.<sup>8</sup>

Legal challenges to Portland and Oregon's burgeoning strip club industry have been unsuccessful in significantly slowing the industry's growth. Significant legal cases in Oregon will be discussed along with the constitutional tools planners and government officials utilize to place restrictions on adult entertainment establishments, but first significant U.S. Supreme Court cases will be discussed.

### **Relevant U.S. Supreme Court Cases**

Adult entertainment is entitled to First Amendment freedom of speech protection. The Amendment states "Congress shall make no law...abridging the freedom of speech."<sup>9</sup> Despite the freedom of speech protection offered by the First Amendment, adult entertainment establishments can be still be regulated. Perhaps the most significant U.S. Supreme Court case relating to adult entertainment is *City of Renton v. Playtime Theatres (1986)*. In 1981, the city of Renton, Washington enacted an ordinance that prohibited any adult film theaters from locating within 1,000 feet of any residence, church, park, or school. In 1982, Playtime Theaters Inc. purchased two theatres to show adult films in the city. The two theatres that Playtime Theatres purchased were located within a 1,000 buffer; therefore, the company challenged the ordinance.<sup>10</sup>

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<sup>8</sup> Ibid.

<sup>9</sup> "The Constitution of the United States." Amendment 1.

<sup>10</sup> *City of Renton v. Playtime Theaters, Inc.* 475 U.S. 41, 106 S. Ct. 925 (1986)

Legislation restricting free speech is either a content-based restriction or content-neutral restriction. Basically, content-based restrictions are those that regulate speech because of what is conveyed, while content-neutral restrictions are those that do not reference the type of speech to be restricted. Therefore, content-based restrictions are reviewed under a higher level of scrutiny, referred to as strict scrutiny, while content-neutral restrictions are reviewed under a level of intermediate scrutiny.<sup>11</sup>

In *City of Renton v. Playtime Theaters*, the U.S. Supreme Court first articulated the “secondary effects” test. This test states that an ordinance which aims to prevent undesirable “secondary effects” of adult entertainment businesses, such as sex-related crime, traffic, neighborhood destabilization etc., is considered content-neutral. An ordinance that seeks to regulate speech, or the content of performances, is considered to be a content-based restriction.<sup>12</sup> The secondary effects consideration and its effect on the level of scrutiny is unique for adult entertainment businesses.<sup>13</sup>

The city of Renton’s ordinance, which created a 1,000-foot buffer around residential areas, churches, and schools in which adult film theatres could not locate, was enacted to prevent harmful secondary effects such as reduction in property values and increased criminal activity.<sup>14</sup> Therefore, the court ruled the ordinance was not restricting the sexually explicit content of Playtime Theatres. Under intermediate scrutiny, the ordinance was upheld because the city adequately proved which

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<sup>11</sup> Weissman, S., Dillard, D., and Skinner, J. 2013. Zoning and Land Use Law in Georgia. Council for Quality Growth. Print. 277.

<sup>12</sup> City of Renton v. Playtime Theaters, Inc. 475 U.S. 41, 106 S. Ct. 925 (1986)

<sup>13</sup> Weissman, S., Dillard, D., and Skinner, J. 2013. Zoning and Land Use Law in Georgia.. Council for Quality Growth. Print. 277.

<sup>14</sup> City of Renton v. Playtime Theatres, 475 U.S. 41, 48, 106 S. Ct. 925 (1986).

secondary effects it was wishing to control. Additionally, the city was not mandating that Playtime Theatres cease operating entirely. Playtime Theatres could still do business outside of the buffer.<sup>15</sup> Perhaps most importantly, the court determined that cities did not have to conduct their own independent investigations of secondary effects, stating, “the First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses.”<sup>16</sup> This was the case with the City of Renton, Washington, which relied on the findings of Seattle to justify its ordinance.

### **Relevant Court Cases in Oregon**

Oregon’s protection of free speech and the press comes from Article 1 Section 8 of the state constitution. Article 8 states, “no law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.”<sup>17</sup> The protection granted under Section 8 is broad. Planners trying to control the growth of adult entertainment establishments therefore take the route outlined by *City of Renton v. Playtime Theatres* by attempting to prove harmful secondary effects. Examples of relevant harmful effects in Portland’s city charter are harassment, intimidation, disorderly conduct, assault or menacing, sexual abuse, public indecency, prostitution,

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<sup>15</sup> City of Renton v. Playtime Theatres, 475 U.S. 41, 50-54, 106 S. Ct. 925 (1986).

<sup>16</sup> City of Renton v. Playtime Theatres, 475 U.S. 51-52, 106 S. Ct. 925 (1986).

<sup>17</sup> “Oregon Constitution.” Article 1.

alcoholic liquor violations, offensive littering, criminal trespassing, theft, arson, possession, manufacture, or delivery of a controlled substance, illegal gambling, criminal mischief, fire or discharge of a firearm, unlawful operation of sound producing equipment, unlawful drinking in public spaces, and indecent exposure.<sup>18</sup>

### ***Portland v. Tidyman (1986)***

In *Portland v. Tidyman (1986)*, John Tidyman owned Start Theatre, which gained notoriety for bringing strippers on stage and featuring erotic films. The City of Portland sued Tidyman in 1976 when it obtained a copy of a film frequently viewed in the club, claiming Tidyman was violating Portland's obscenity statute.<sup>19</sup> Also, the city created Ordinance NO. 1555387 that sought to control "adult businesses" by creating a buffer of at least 500 feet around these establishments and any residential area and any public or private schools. The ordinance put a buffer of 1,000 feet from any other adult business as well to prevent a cluster of establishments from co-locating within the city.<sup>20</sup>

A decade after the city's initial suit, the case made it to Oregon's Supreme Court. Justice Linde wrote the majority opinion, which invalidated the city's ordinance. The city tried to prove that it was regulating the effect of speech, rather than the speech itself by providing "evidence" that adult businesses were incompatible with other residential zones. The city stated that these businesses "adversely affect the quality and stability of nearby residential and commercial areas," and that a cluster of adult businesses

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<sup>18</sup>"City of Portland Charter, Code and Policies: Chapter 14B.60 Chronic Nuisance Property." 2016. <https://www.portlandoregon.gov/citycode/?c=28531>.

<sup>19</sup>Crockett, Zachary. June 17, 2015. "Why Does Portland Have So Many Strip Clubs." *Priceonomics*. <http://priceonomics.com/why-does-portland-have-so-many-strip-clubs/>.

<sup>20</sup>*Portland v. Tidyman*, 306 Or. 174, 179, 759 P. 2d 244 (1988).

“tended to create or accelerate blight conditions.”<sup>21</sup> The court found these findings both vague and conclusory. The ordinance did not specify what the city meant by the quality of residential areas, blighted conditions, nor did the city demonstrate how adult businesses were incompatible with residential and commercial areas.<sup>22</sup>

*Portland v. Tidyman* is important in Oregon’s strip club history because the Supreme Court of Oregon deviated away from the ruling of the United States Supreme Court in its decision of *Renton v. Playtime Theatres*. In *Renton v. Playtime Theatres*, the Supreme Court ruled that cities could rely on legislative findings or experiences from other cities to justify their own ordinance for controlling secondary effects. Oregon’s Justice Linde disagreed with this ruling, stating that an ordinance or restriction should be considered unconstitutional if the feared secondary effects are not actually present.<sup>23</sup> Essentially, the Oregon Supreme Court was setting a much higher standard for local communities to prove that adult businesses in their areas were causing harmful effects. For example, harmful effects caused by adult businesses in City A will not justify an ordinance or restriction in City B. Consequently, adult entertainment was given more protection than in any other location in the United States.

As a result, adult businesses have thrived in Oregon and the City of Portland. Below is a map showing active strip clubs in and near Portland.<sup>24</sup> Not included are adult

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<sup>21</sup>Portland v. Tidyman, 306 Or. 174, 179, 759 P. 2d 248 (1988).

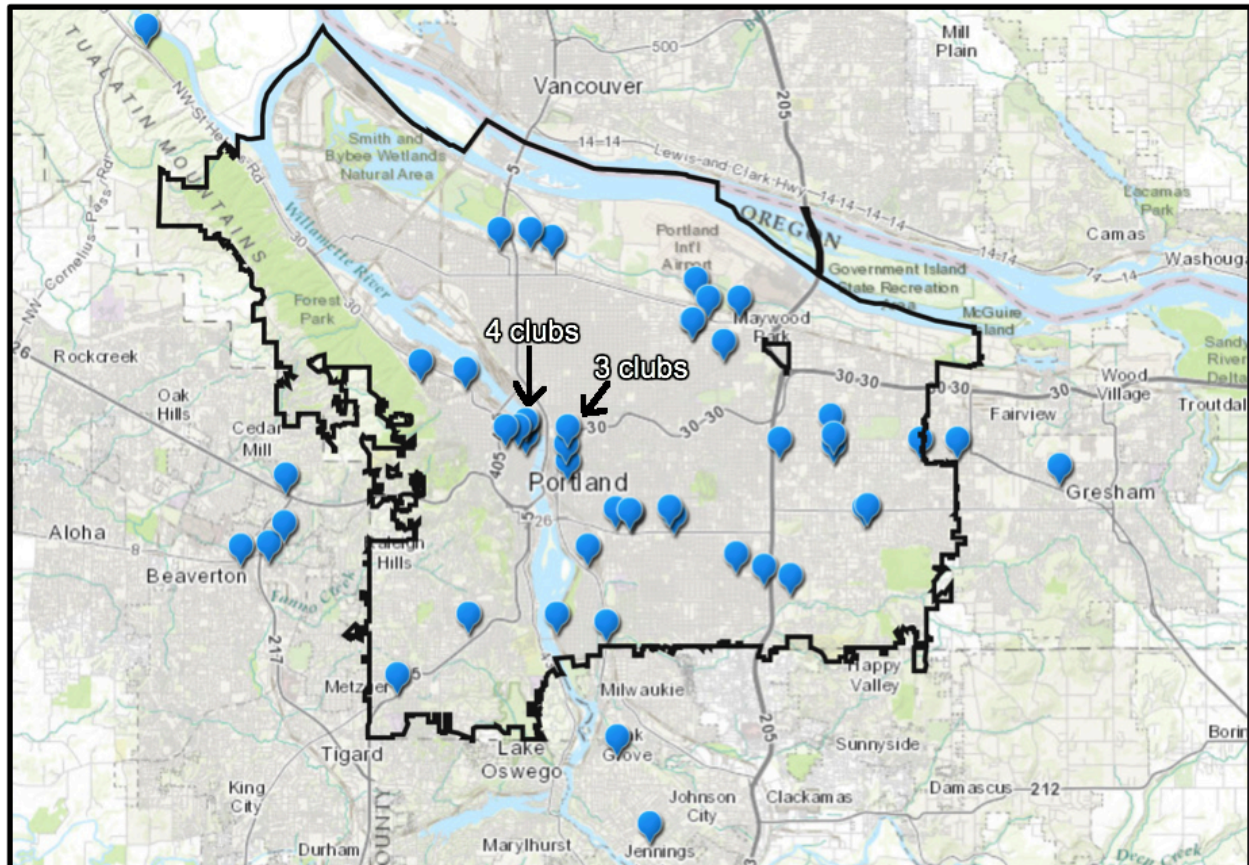
<sup>22</sup>Ibid.

<sup>23</sup>Portland v. Tidyman, 306 Or. 174, 179, 759 P. 2d 250 (1988).

<sup>24</sup> Map Data Source: TUSCL. “Portland Strip Clubs.” 2016 *The Ultimate Strip Club List*. <https://www.tuscl.net/city.php?id=1425>. Created by Ryan Fleming.

bookstores and video stores. The clustering is evident and stark given Portland is only home to 632,309 people.<sup>25</sup>

**Map: Strip Clubs In & Near Portland City Limits**



### **The Protection of “Obscene Speech” in *State v. Henry* (1987)**

In *State v. Henry* (1987), the Supreme Court of Oregon decided unanimously that Oregon’s state law that outlawed possessing or disseminating obscene material was unconstitutional. The defendant, Earl Henry, owned an adult bookstore in Redmond, Oregon. Police searched and seized materials from Henry’s store and charged him with disseminating and possessing obscene material under the ORS 167.087 statute. ORS

<sup>25</sup>“QuickFacts: Portland, City of Oregon.” 2015. *United States Census Bureau*.

167.087 defined obscene material as that which depicted sadomasochistic abuse or sexual conduct, that an average person would find the entire work as appealing to the prurient interest in sex, and that lacked any political, scientific, or artistic value.<sup>26</sup>

The Supreme Court of Oregon distinguished the United States constitution from that of Oregon's. The court interpreted Oregon's protection of freedom of speech under Article 1 Section 8 as having more broad protection than the First Amendment of the United States Constitution. Therefore, the "Miller test" for obscenity could not be applied in Oregon. In authoring the unanimous decision, Justice Jones stated, "we hold that characterizing expression as 'obscenity' under any definition, be it Roth, Miller or otherwise, does not deprive it of protection under the Oregon Constitution. Obscene speech, writing or equivalent forms of communication are 'speech' nonetheless."<sup>27</sup> The justices stated that obscene speech could be regulated in the interests of minors, captive audiences, beleaguered neighbors, and unwilling viewers; however, those groups were not any part of the case being considered.<sup>28</sup> This ruling made Oregon the first state to protect obscene speech.<sup>29</sup>

### **Then how does Oregon regulate and/or restrict adult entertainment?**

Based on the protections offered to adult businesses under *Portland v. Tidyman* (1986) and *State v. Henry* (1987), adult entertainment establishments can't be zoned

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<sup>26</sup>State v. Henry, 302 Or. 510, 732 P. 2d 9 (1987).

<sup>27</sup>Ibid.

<sup>28</sup>Ibid.

<sup>29</sup>Hudson, David. October 28, 1998. "Wisconsin high court could strike down obscenity law." *First Amendment Center*. <http://www.firstamendmentcenter.org/wisconsin-high-court-could-strike-down-obscenity-law>.



differently than other businesses. Additionally, cities in Oregon can't charge adult entertainment establishments additional licensing fees or impose regulations more burdensome than those imposed on other types of businesses.<sup>30</sup>

Yet, cities can regulate or close down an adult business using two different methods. First, cities can conduct research on areas within the city that have adult businesses and those comparable areas within the city that are without adult businesses. The numbers of calls to police, arrests, and criminal incidents can be tracked and utilized to prove adult businesses have harmful effects on crime, real estate values, and livability. If the city proves it collected the data objectively, it could make a case for an ordinance wishing to control secondary effects of adult businesses.<sup>31</sup> Based on the decision in *Portland v. Tidyman* (1986), cities will have to conduct their own studies and individually prove the relationship between adult businesses and harmful effects. Unlike in other states, localities can't rely on studies conducted by other cities.<sup>32</sup>

The second method for regulating adult entertainment establishment is through a nuisance abatement code. Under the code, if an adult business has repeated violations, the city can close down the adult business. For example, the city of Portland's nuisance abatement code defines a "chronic nuisance property" in four different ways. First, properties are considered a chronic nuisance if they have had three or more reported nuisance activities within the last 30 days. Second, if the property or any person affiliated with the property has engaged in three or more nuisance activities within 200

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<sup>30</sup>League of Oregon Cities. December 2010. "The Regulation of Adult Businesses." (4).  
<http://www.orcities.org/Portals/17/A-Z/LOCAAdultBusinesses.pdf>

<sup>31</sup>Ibid.

<sup>32</sup>Portland v. Tidyman, 306 Or. 174, 179, 759 P. 2d 250 (1988).

feet of the property in the last 30 days. Third, a nuisance property is one that has been found to possess, manufacture, or deliver illegal and controlled substances after the property was searched with a valid warrant. Fourth, properties having continuous or repeated nuisance activities can be classified as chronic nuisances. The thresholds for continuous or repeated nuisance activities are outlined in Portland's city code.<sup>33</sup>

Under Chapter 14B.60 of Portland's city code and charter, examples of nuisance activities are harassment, intimidation, disorderly conduct, assault or menacing, sexual abuse, public indecency, prostitution, alcoholic liquor violations, offensive littering, criminal trespassing, theft, arson, possession, manufacture, or delivery of a controlled substance, illegal gambling, criminal mischief, fire or discharge of a firearm, unlawful operation of sound producing equipment, unlawful drinking in public spaces, and indecent exposure. Oregon state laws provide definitions of each.<sup>34</sup>

### **Relevant Court Cases In Georgia and Major Differences From Oregon**

As previously noted, Atlanta, Georgia ranks fifth on the list of cities with highest strip clubs per 100,000 residents.<sup>35</sup> On the next page is a map showing active strip clubs in and near Atlanta.<sup>36</sup> Despite having a high density of strip clubs like the City of Portland, the legal and regulatory framework is different.

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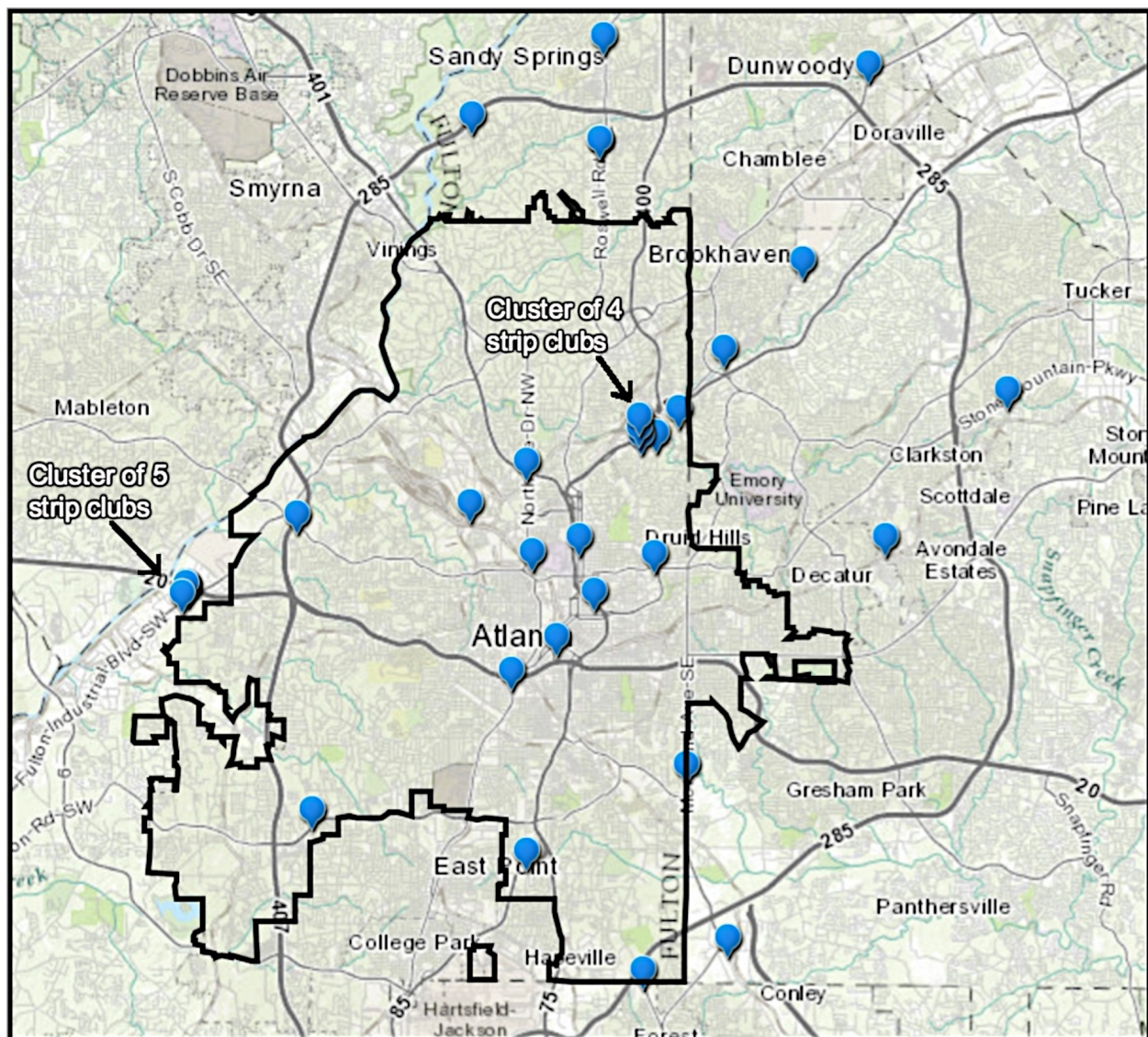
<sup>33</sup> "City of Portland Charter, Code and Policies: Chapter 14B.60 Chronic Nuisance Property." 2016. <https://www.portlandoregon.gov/citycode/?c=28531>.

<sup>34</sup> Ibid.

<sup>35</sup> Crockett, Zachary. June 17, 2015. "Why Does Portland Have So Many Strip Clubs." *Priceonomics*. <http://priceonomics.com/why-does-portland-have-so-many-strip-clubs/>.

<sup>36</sup> Map Data Source: TUSCL. "Atlanta Strip Clubs." 2016 *The Ultimate Strip Club List*. <https://www.tuscl.net/city.php?id=1306>. Created by Ryan Fleming.

**Map: Strip Clubs In & Near Atlanta City Limits**



There are two major differences between how Georgia and Oregon can restrict strip clubs. First, Georgia does not protect obscene speech.<sup>37</sup> Second, Georgia relies on the secondary effects test given in the United States Supreme Court case *Renton v.*

<sup>37</sup> Weissman, S., Dillard, D., and Skinner, J. 2013. *Zoning and Land Use Law in Georgia*. Council for Quality Growth. Print. 276.

*Playtime*. This means that cities in Georgia can rely on studies conducted in other areas to regulate activity.<sup>38</sup>

### ***Paramount Pictures Corporation v. Busbee (1982)***

In this case, the Georgia Supreme Court established a 3-part test for content-neutral regulations based on the United States Supreme Court framework. The test to determine if an ordinance will survive Georgia's constitutional scrutiny is as follows:

1. It furthers a government interest (protection of property values and crime prevention)
2. Is unrelated to suppression of speech
3. Its incidental restriction of speech is no greater than necessary to further government interest<sup>39</sup>

Consequently, the Georgia Supreme Court has consistently held that mitigating crime and protecting property values are satisfactory governmental interests that satisfy part 1 of the three-part test.<sup>40</sup>

### ***Chambers v. Peach County (1996)***

In 1996, Peach County wrote an adult entertainment ordinance aimed at shutting down its county's adult entertainment clubs on the grounds that such establishments were a community nuisance. However, according to the Georgia Supreme Court the ordinance was unconstitutional because the county did not sufficiently prove that it enacted its ordinance to combat the secondary effects of traffic and crime. The plaintiff's

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<sup>38</sup> Ibid. 280.

<sup>39</sup> *Paramount Pictures Corp v. Busbee*, 250 Ga. 252(1), 292 S.E.2d 250 (1982)

<sup>40</sup> Weissman, S., Dillard, D., and Skinner, J. 2013. Zoning and Land Use Law in Georgia. Council for Quality Growth. Print. 283.

adult entertainment business which had live nude dancing was considered a form of protected speech under both Georgia and the United State's constitutions.<sup>41</sup>

In response, Peach County subsequently rewrote the ordinance and in 1997 the same plaintiff sued the county again. However, this time the Georgia Supreme Court upheld the new ordinance because Peach County officials were able to prove it was written with the intent to control secondary effects.<sup>42</sup> Before enacting the new ordinance, Peach County heard testimony of studies that showed a connection between adult entertainment businesses and increases in sex-related crimes and the decrease in property values. Testimony by state and local law enforcement officials were enough to convince the Georgia Supreme Court this new ordinance passed scrutiny.<sup>43</sup>

### ***Goldrush II v. City of Marietta (1997)***

In 1994, Georgia amended its constitution, granting the state (and later counties and municipalities) with “full and complete authority to regulate alcoholic beverages and to regulate, restrict, or prohibit activities involving alcoholic beverages.”<sup>44</sup> In effect, this enabling legislation gave Georgia a 21st Amendment for the state government. Consequently, local governments in the state have tried to bypass adult entertainment establishments' first amendment protections by regulating the sale of alcohol.<sup>45</sup>

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<sup>41</sup> *Chambers v. Peach County*, 266 GA., 318, 320, 467 S.E.2d 519 (1996).

<sup>42</sup> *Chambers v. Peach County*, 268 GA. 672, 673-674, 492 S.E.2d 191 (1997).

<sup>43</sup> *Ibid.*

<sup>44</sup> Georgia Constitution. Of 1983, Article III, Section VI, Paragraph VII.

<sup>45</sup> Weissman, S., Dillard, D., and Skinner, J. 2013. Zoning and Land Use Law in Georgia. Council for Quality Growth. Print. 285.

Following the enactment of this new amendment, the city of Marietta altered its adult entertainment ordinance so owners of these establishments would have to choose between obtaining a liquor license or an adult entertainment license. Marietta's ordinance was challenged in *Goldrush II v. City of Marietta*. Applying the state's three-part test for content-neutral legislation, the Georgia Supreme Court upheld the ordinance because it furthered government interests (of reducing and preventing crime), was unrelated to the suppression of speech, and sufficiently narrowly tailored.<sup>46</sup>

### ***Regulating Alcohol: Tron, Inc. v. City of Brookhaven (2014)***

A more recent case involves the parent corporation of Tron, Inc. and its adult entertainment establishment, "The Pink Pony."<sup>47</sup> In this case, the newly created city of Brookhaven, Georgia passed a law forbidding the sale of alcoholic beverages in strip club establishments within the city.



According to the Mayor of Brookhaven, this was brought on by residents' concern over nearby property values.<sup>48</sup> Tron, Inc. brought suit alleging a violation of its first amendment rights and declaring such an ordinance would make its operation effectively

<sup>46</sup> *Goldrush II v. City of Marietta*, 267 Ga. 683, 689-692, 482 S.E.2d 347 (1997)

<sup>47</sup> Wirth, Michelle. Oct. 7, 2014. "State's High Court Sides With Brookhaven In Pink Pony Lawsuit." *Wabe 90.1 FM News*.  
<http://news.wabe.org/post/states-high-court-sides-brookhaven-pink-pony-lawsuit>.

<sup>48</sup> *Ibid*.



impossible to maintain. The Georgia Supreme Court ruled in favor of the city of Brookhaven, stating the city's ordinance did not unconstitutionally restrict the club's free speech rights. Despite this ruling, the city and the establishment came to an agreement where the club would continue business as usual and pay the city a "fine" of \$225,000 per year. The Pink Pony will operate as usual for no more than six more years from November 2014 onwards. In addition, the Pink Pony will pay all of the city's legal fees, donate land along Peachtree Creek, and donate \$75,000 to create a linear park.<sup>49</sup>

**Table 1: Key Differences**

	Georgia	Oregon
<b>Proving Secondary Effects</b>	<p>City of Renton v. Playtime Theatres</p> <p>Cities can rely on findings/experiences of other cities to justify an ordinance.</p>	<p>Portland v. Tidyman</p> <p>Cities can <b>not</b> rely on findings/experiences of other cities to justify an ordinance</p>
<b>Free Speech</b>	Does not protect obscene speech	Protects obscene speech
<b>Regulating</b>	<p>-Regulating the sale of alcohol</p> <p>-Buffers (500, 1000, 2000 ft.) (e.g. Atlanta - 2000 ft.)<sup>50</sup></p>	<p>-Clubs can't be zoned differently than other businesses.</p> <p>-Chronic nuisance abatement codes (e.g. Portland)</p>

<sup>49</sup> Milligan, Mandy. Nov. 5, 2014. "Brookhaven and Pink Pony strike nude-dancing deal." CBS46. <http://www.cbs46.com/story/27282854/pink-pony-to-stay-open-in-brookhaven>.

<sup>50</sup> City of Atlanta. 2017. "Code of Ordinances: Sec. 10-89." [https://www.municode.com/library/ga/atlanta/codes/code\\_of\\_ordinances?nodeId=PTIICOORENO\\_R\\_CH10ALBE\\_ARTIIDEMA\\_DIV2LI\\_SDIILORE\\_S10-89ADDIREADENES](https://www.municode.com/library/ga/atlanta/codes/code_of_ordinances?nodeId=PTIICOORENO_R_CH10ALBE_ARTIIDEMA_DIV2LI_SDIILORE_S10-89ADDIREADENES).

## Part Two: Relevant Studies on Strip Clubs and Crime

What we think of as strip clubs today first appeared in the United States in the first half of the 19th Century. During these first years of operation, far less regulation was present. As a result, secondary effects of crime and prostitution were common within the businesses themselves. The strip clubs of today face much more government regulation than their predecessors. Therefore, the illegal activities once present inside these establishments have now moved outside, in the surrounding public spaces.<sup>51</sup>

Common fears about adult entertainment and sex-oriented businesses are that these establishments provide a locus for illicit and undesirable activities. Additionally, on-site or nearby alcohol serving establishments are believed to increase crime and undesirable behavior. Adjacent land uses, such as educational, religious, or residential areas, are thought to be incompatible with areas containing adult entertainment. Even if adult entertainment establishments are not the cause of illegal activity, their presence can legitimize a reason for persons committing illegal acts to be present.<sup>52</sup>

To provide justification for city regulations, a number of cities and independent researchers have investigated the link between adult entertainment and crime since the late 1970s. A review of these studies shows that the overwhelming majority find that the presence of adult entertainment to be positively correlated with crime rates.<sup>53</sup> Studies analyzing crime levels before and after the expansions of adult entertainment

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<sup>51</sup> Hecht, Peter R. March 31, 1996. "Report To: The American Center For Law and Justice On the Secondary Impacts of Sex Oriented Businesses." Environmental Research Group. 1-18.

<sup>52</sup> Ibid.

<sup>53</sup> McCleary, Richard. March 31, 2010. "Testimony on Missouri House Bill 1551: Secondary Effects of Sexually-Oriented Businesses." 1-15.



establishments show a time-order increase in crime levels after new openings/expansions.

In 1977, the Los Angeles City Council instructed the city planning department to conduct a comprehensive study on crime levels around adult entertainment establishments in the city. In public testimony, residents expressed fear of walking the streets in Hollywood neighborhoods with the highest concentration of establishments. Between 1965-1975, the number of adult entertainment establishments in these neighborhoods increased from 11 to 88. The purpose of the study was to determine if citizens' fears could be substantiated: was crime concentrated in the areas with higher concentrations of adult entertainment?<sup>54</sup>

The Los Angeles Police Department (LAPD) provided the planning department with both neighborhood and city-wide crime statistics between 1969-1975. Five study areas, each containing relatively high concentrations of adult entertainment establishments, were analyzed. From 1969-1975, reported part I crimes (homicide, rape, aggravated assault, robbery, burglary, larceny, and vehicle theft) increased 7.6% in the study areas compared to a 4.2% increase in the city as a whole. Additionally, suspects arrested for part I crimes increased by 16.2% in the study area while dropping 5.3% in the city at large. Prostitution arrests in the study area increased by 15 times greater than the city average (372.2% v. 24.5%).<sup>55</sup>

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<sup>54</sup> Department of City Planning, City of Los Angeles. June 1977. "Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles." City Plan Case NO26475.

<sup>55</sup> Ibid.

On November 8, 1977, the City of Phoenix, Arizona passed an ordinance that put a 500-foot buffer around residential areas, where adult businesses could not operate, and a 1000-foot buffer between two adult entertainment establishments. In 1979, the city published a study showing that there were higher amounts of sex offenses committed in neighborhoods containing adult businesses compared to those without them. The City picked three study areas, each containing an adult business, and paired them with three control areas without an adult business. Study areas and control areas were matched based on similar populations, median family incomes, percentage of residents who were non-white, the median age of the population, and the percentage of dwellings built between 1950-1970.<sup>56</sup>

The amount of property crimes, violent crimes, and sex offenses per 1,000 people in 1978 were compared in each study area and corresponding control area. The three study areas had an average of 40% more property crimes and about the same level of violent crimes (only 4% more) per 1,000 people as compared to the average for the three control areas. On the other hand, the study areas had an average of 6 times (606%) the sex crimes as compared to the control areas.<sup>57</sup>

In 1980, the Minneapolis, Minnesota City Council commissioned a study to provide empirical support for regulating adult sexually oriented businesses. At the time of the study, the city had an ordinance creating a 500-foot buffer between establishments and residential zones. Crime data for two one-year periods was analyzed (1974-1975 and 1979-1980). Crime (commercial robbery and burglary,

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<sup>56</sup> City of Phoenix Planning Department. May 25, 1979. "Adult Business Study." 1-14.

<sup>57</sup> Ibid.

residential burglary, personal robbery, rape, and assault) was aggregated by census tract and calculated based on each tract's population. The resulting crime index gave a tract-level measure of number of crimes per 1,000 people living in the tract.<sup>58</sup>

The researchers at the Minnesota Crime Prevention Center controlled for the percentage of buildings that were commercial property, the mean income, and the percentage of establishments serving food for each census tract. The presence of a sexually oriented business in a census tract was found to be significantly related to crime. For the City of Minneapolis, the addition of one sexually oriented adult business increased the crime rate index (crimes per 1,000 population) by 9.15. The city wide average crime rate index by tract was approximately 48.62 crimes per 1,000 people.<sup>59</sup>

In 1990, the City of Garden Grove, Michigan contracted with university researchers to analyze the relationship of crime and adult businesses. After years of experience, the Police Department suspected these businesses to be public safety hazards. As a result, the City of Garden Grove passed an ordinance placing a 200-foot buffer between adult businesses and schools, churches, and residences and a 1000-foot buffer between adult businesses. Crime for the city was analyzed between 1981-1990 and divided into part I crimes (homicide, rape, robbery, assault, burglaries, thefts, and auto thefts) and part II crimes (sexual offenses, drug offenses, alcohol offenses, weapons offenses, disorderly conduct).<sup>60</sup> The city recognized the need to base these

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<sup>58</sup> McPherson, Marlys and Glenn Silloway. October 1980. "An Analysis of the Relationship Between Adult Entertainment Establishments, Crime, and Housing Values." Minnesota Crime Prevention Center. 1-76.

<sup>59</sup> Ibid.

<sup>60</sup> McCleary, R. and J.W. Meeker. October 23, 1991. "Final Report to the City of Garden Grove: The Relationship Between Crime and Adult Business Operation on Garden Grove Boulevard." City of Garden Grove, California. 1-59.

restrictions based on secondary effects rather than the content or moral offensiveness of adult businesses.

Through their analysis, the researchers came to the conclusion that the seven adult businesses located on Garden Grove Boulevard constituted a significant public safety hazard. These seven businesses accounted for 10.5 percent of part I crimes and 25.5% of part II crimes on the Boulevard between 1981-1990. Compared to the crime levels for 603 other, non-adult business addresses on Garden Grove Boulevard, these elevated crime levels could only occur by chance one time out of 100.<sup>61</sup>

Still, it could be argued that the adult businesses moved into high crime areas. To test for this hypothesis, crime rates were analyzed one year before and one year after three major expansions at two existing adult business locations. Crime rates were analyzed at three radii: 200 feet, 500 feet, and 1000 feet from the expansion and compared to “control” sites based on mean crime counts of the other adult businesses not undergoing expansions. After these expansions, crime rose significantly and was exacerbated when expansions were located next to a tavern (alcohol serving establishment). No evidence was found for increased crime beyond 1000 feet from these expansions.<sup>62</sup>

Also in 1990, the Tucson, Arizona Police Department conducted a covert observational study of adult businesses located in the city. Officers discovered that many employees/dancers in these establishments were prostitutes. Dancers would offer patrons private shows where they could pay the dancers to perform acts of

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<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

prostitution for an additional price. Some of these acts occurred on the premises with the knowledge of the establishment's management. Additionally, underage females, as young as 15, were knowingly being hired to dance nude.<sup>63</sup>

In 1996, a study examined the demographic characteristics of patrons visiting a strip club in Tampa, Florida. Anonymous interviews of 452 patrons showed them to be largely middle-class, middle aged, white males, employed mostly as professionals, managers, or white-collar workers. Therefore, patrons were not the stereotypical "undesirables" believed to frequent these businesses. For example, a higher share of the patrons were registered to vote, were college graduates, and had higher incomes than the average male in Hillsborough County or Florida. Most importantly, the study suggests that these patrons were positively impacting Tampa's economy and not bringing crime and/or economic blight.<sup>64</sup>

In 2006, university researchers conducted a study of peep show establishments in San Diego, California. In 2000, the city passed an ordinance that made it unlawful to operate a peep show between 2:00 a.m. and 6:00 a.m. City officials claimed this ordinance was passed to combat crime around these establishments during these hours. For five years of data, Calls for Police Service (CFSs) were analyzed in areas of 2000 feet around the peep show establishments (1000 feet on each side). Control areas were established on each side of this 2000-foot peep show area (the 1000 feet adjacent on each side). No peep shows were located in the control areas. The researchers found

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<sup>63</sup> Tucson, Arizona Police Department. May 11, 1990. "A Study of Crime and Adult Entertainment." City of Tucson, Arizona.

<sup>64</sup> Fisher, Randy D. 1996. "Consumers of erotic entertainment: A survey of the patrons of the Mons Venus." 1-11.

that the presence of peep shows did not lead to more calls for service. Additionally, there was not a disproportionate share of calls for service in the peep show areas between 2:00 a.m. and 6:00 a.m. than would be expected by random distribution.<sup>65</sup>

In the same year, a response to this study was written. The authors made the crucial point that Calls for Service (CFSs) are not used by modern criminologist to measure crime or crime risk. Between 2000 and 2004, two national criminology journals (*Justice Quarterly* and *Criminology*) published 100 articles with crime-related statistics. Of these articles, 98 analyzed Uniform Crime Reports (UCRs). Of the two articles that used Calls for Service (CFSs), both did not use CFSs to measure crime or crime risk. According to the authors, CFSs are not used by to measure crime or crime risk because they are unreliable compared to crime statistics provided through conventional measures, like Uniform Crime Reports.<sup>66</sup>

In 2010, a University of California, Irvine professor (Richard McCleary) with over 30 years of experience in analyzing the relationship between crime and sexually oriented businesses wrote a short testimony on the politics of current studies. In recent years, state legislatures have been bombarded with studies commissioned by the adult entertainment industry, all of which aim to show that these businesses have no crime-related secondary effects. These commissioned studies run counter to the evidence produced over the last 30 years which has shown that sexually oriented businesses

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<sup>65</sup> Linz, D. Paul, M. Yao, M. May 2006. Peep show establishments, police activity, public place, and time: a study of secondary effects in San Diego, California. *J Sex Res.* 43(2):182-93.

<sup>66</sup> McCleary, Richard and James W. Meeker. May 2006 "Do Peep Shows "Cause" Crime? A Response to Linz, Paul and Yao." *J.W. Journal of Sex Research*, 43(2),194-196.

generate large and significant crime-related secondary effects. When commissioned studies find the contrary, it appears in every case to be the result of weak designs.<sup>67</sup>

**Table 2: Timeline of Studies**

Location	Date	Data	Data Type
Los Angeles, CA	1977	1969-1975	Part I crimes; prostitution arrests
Phoenix, AZ	1979	1978	Property and violent crimes; sex crimes
Minneapolis, MN	1980	1974-1975; 1979-1980	commercial robbery and burglary, residential burglary, personal robbery, rape, and assault
Garden Grove, MI	1990	1981-1990	Part I crimes, Part II Crimes
Tucson, AZ	1990	1990	Police Dept. covert observational study
Tampa, FL	1996	1996	Anonymous interviews with patrons
San Diego, CA	2006	5 years	Calls for Service
Journal of Sex Research	2006	2000-2004	Critique to San Diego study; summarized data used by 100 articles with crime-related statistics
Missouri House	2010	30 years	Expert testimony: history of studies show crime-related effects

*Note: \*Studies shaded red support crime-related effects.*

*\*Studies shaded blue did not analyze crime, but rather demographics of patrons.*

*\*Studies shaded green did not show crime-related effects.*

<sup>67</sup> McCleary, Richard. March 31, 2010. "Testimony on Missouri House Bill 1551: Secondary Effects of Sexually-Oriented Businesses." 1-15.

## **Part Three: Analysis of Crime and Strip Clubs in Atlanta and Portland**

### **Methodology**

For Atlanta, Georgia and Portland, Oregon, crime was geocoded and aggregated at the census block level. In both cities, census blocks were divided into two groups: those with strip clubs and those without strip clubs. Crime data is from January 01, 2016 – January 17, 2017 for the City of Atlanta and from January 01, 2016 – January 23, 2017 for the City of Portland.

For the City of Atlanta, Part I crimes used in the Department of Justice's uniform crime reports were analyzed. These serious offenses, listed below, regularly occur in all areas and are likely to be reported to police:

- Aggravated Assault
- Auto Theft
- Burglary (Breaking or entering)
- Homicide
- Larceny-Vehicle and Non Vehicle
- Robbery-Pedestrian and Residence
- Rape

For the City of Portland, Part I crimes could not be obtained from Portland's online crime database. However, Vice Crimes commonly thought to be associated with strip clubs and their patrons were provided for the past year and were analyzed:

- Drugs
- Liquor
- Prostitution
- Illegal Gambling

For Atlanta and Portland, independent samples t-tests were run to compare crime counts per 1000 residents in census blocks with strip clubs and census blocks without strip clubs. Population values for each census block were obtained from the American Community Survey 2011-2015 (5-year estimates).

For both Atlanta and Portland, certain census blocks cross the cities' boundaries. To gain population estimates for the portion of these census blocks within city limits, it was assumed population was evenly distributed across the census blocks. The area for the entire census block and the portion inside city limits then provided a proportion to estimate the population residing in the city.



### Atlanta Analysis: Part I Crimes

Table 1 and Table 2 below provide the group statistics and independent samples t-test for the census blocks with strip clubs and census blocks without strip clubs in Atlanta. Mean crime counts per 1000 residents in the two groups were compared. In the City of Atlanta, 14 census blocks have strip clubs (Group 1), while 305 census blocks do not have a strip club (Group 0). Table 1 shows that census blocks with strip clubs had a higher average crime count (123.2 crimes per 1000 residents) than census blocks without a strip club (70.7 crimes per 1000 residents).

**Table 1: Group Statistics (Atlanta)**

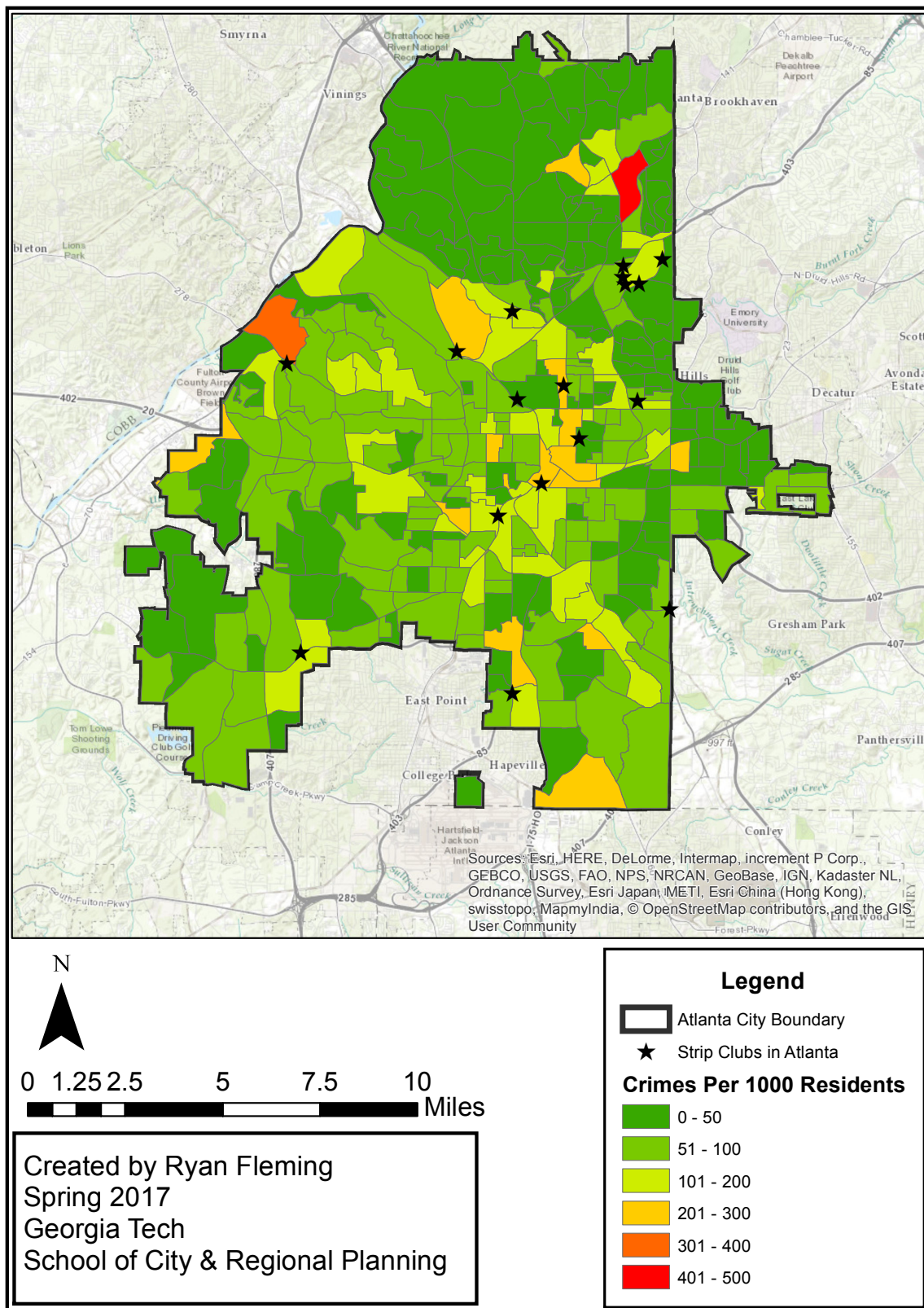
Crimes Per 1000 Residents	Group	N	Mean	Std. Deviation	Std. Error Mean
	0	305	70.754	62.041	3.552
	1	14	123.155	68.946	18.427

In Table 2 below, the significance value for Levene's test for equality of variances is greater than 0.05 ( $p = .185$ ), so the null hypothesis of equal variances cannot be rejected. Therefore, the row highlighted in green (equal variances assumed) will be utilized for the analysis. The result of the independent samples t-test with equal variances gives a significance value of .002. Based on this value, we can reject the null hypothesis that the mean crime counts for census blocks with strip clubs and census blocks without strip clubs are the same. Therefore, the difference in crime counts is statistically significant at the  $\alpha = .01$  level.

**Table 2: Independent Samples Test (Atlanta)**

		Levene's Test for Equality of Variances		t-test for Equality of Means						
		F	Sig.	t	df	Sig. (2- tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
									Lower	Upper
Crimes per 1000 residents	Equal variances assumed	1.761	.185	-3.075	317	.002	-52.402	17.039	-85.925	-18.878
	Equal variances not assumed			-2.792	13.983	.014	-52.402	18.766	-92.655	-12.148

## Atlanta Census Blocks: Part I Crimes Per 1000 Residents January 01, 2016 - Jan 17, 2017



### Portland Analysis: Vice Crimes

Table 3 and Table 4 below provide the group statistics and independent samples t-test for the census blocks with strip clubs and census blocks without strip clubs in Portland. Mean crime counts per 1000 residents in the two groups were compared. In the City of Portland, 33 census blocks have strip clubs (Group 1), while 440 census blocks do not have a strip club (Group 0). Table 3 shows that census blocks with strip clubs had a higher average crime count (20.7 crimes per 1000 residents) than census blocks without a strip club (4.7 crimes per 1000 residents).

**Table 3: Group Statistics (Portland)**

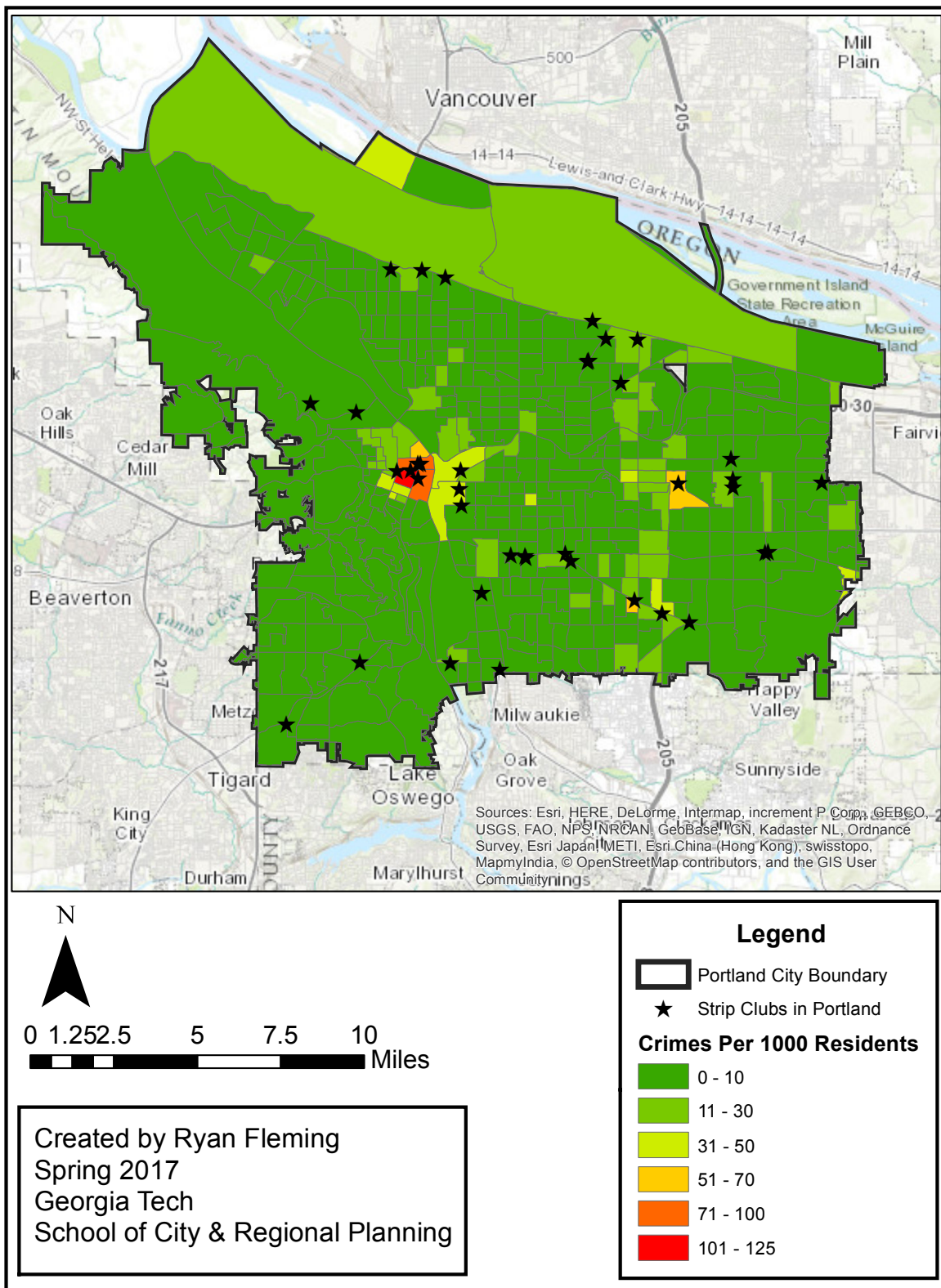
Vice Crimes Per 1000 Residents	Group	N	Mean	Std. Deviation	Std. Error Mean
	0	440	4.705	7.068	.337
	1	33	20.712	27.568	4.799

In Table 4 below, the significance value for Levene's test for equality of variances is less than 0.05 ( $p = .000$ ), so the null hypothesis of equal variances can be rejected. Therefore, the row highlighted in green (equal variances not assumed) will be utilized for the analysis. The result of the independent samples t-test with equal variances gives a significance value of .002. Based on this value, we can reject the null hypothesis that the mean crime counts for census blocks with strip clubs and census blocks without strip clubs are the same. Therefore, the difference in crime counts is statistically significant at the  $\alpha = .01$  level.

**Table 4: Independent Samples Test (Portland)**

		Levene's Test for Equality of Variances		t-test for Equality of Means						
		F	Sig.	t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
									Lower	Upper
Vice Crimes Per 1000 Residents	Equal variances assumed	129.014	.000	-8.950	471	.000	-16.007	1.789	-19.521	-12.492
	Equal variances not assumed			-3.327	32.316	.002	-16.007	4.811	-25.802	-6.211

## Portland Census Blocks: Vice Crimes Per 1000 Residents January 01, 2016 - Jan 23, 2017





In Atlanta and Portland, census blocks with strip clubs had higher levels of crime per 1000 residents than census blocks without strip clubs. This difference is statistically significant at the  $\alpha = .01$  level for both cities. Despite the correlation between strip clubs and higher crime levels, more research is needed to determine causation. Strip clubs could have located in census blocks with higher crime levels. Therefore, these cities should track crime before and after an opening/expansion and closure of strip clubs within city boundaries. This time-order effect will determine if strip clubs are the root cause of higher crime levels, or if they locate in higher crime areas.

For many residents in declining and/or high crime neighborhoods, waiting for an opening/expansion or closing of an adult entertainment establishment to conduct a time-order effect between strip clubs and crime will provide an unsatisfactory solution to improve neighborhoods and foster economic revitalization. A significant time period, six months to a year, is needed to gather enough crime data after an opening/expansion or closing to determine if there is an crime-related effect. During this time, a business which attracts and/or is causing crime will continue to operate as normal while the community which it resides in must deal with the negative externalities of increased crime levels (costs for policing, decreased property values, less personal safety).

Portland's method for regulating adult entertainment establishments, through the city's chronic nuisance abatement code allows the community, planners, and law enforcement to respond much faster to properties causing crime in local communities. When a property has three or more police reports on or within 200 feet of the property during a 30-day period, local police will independently review the reports.<sup>68</sup>

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<sup>68</sup> City of Portland Charter, Code and Policies. Chapter 14B.60 Chronic Nuisance Property: 14B.60.030 Procedure. 2016. <https://www.portlandoregon.gov/citycode/?c=28531>.

If the reported activities fall under example of nuisance activities outlined in the table below, the owner or operator of the property will be given a warning and notified that the property is close to being labeled a chronic nuisance property. Local police will give notice to the property owner and/or operator with a detailed statement of the nuisance activities found to have occurred. The owner/operator will be given 10 days to discuss these nuisance activities with local police.<sup>69</sup>

### Examples of Chronic Nuisance Activities

-Harassment	-Intimidation	-Disorderly Conduct	-Assault or menacing
-Sexual abuse	-Public indecency	-Prostitution	-Alcoholic liquor violations
-Offensive littering	-Criminal trespassing	-Theft	-Arson
-Possession, manufacture, or delivery of controlled substance	-Illegal gambling	-Criminal mischief	-Unlawful operation of sound producing equipment
-Fire or discharge of a firearm	-Unlawful drinking in public spaces	-Indecent exposure	

Note: Oregon state laws provide definitions of each.<sup>70</sup>

<sup>69</sup> City of Portland Charter, Code and Policies. Chapter 14B.60 Chronic Nuisance Property: 14B.60.030 Procedure. 2016. <https://www.portlandoregon.gov/citycode/?c=28531>.

<sup>70</sup> Ibid.

If additional nuisance activity occurs, the property will be designated a chronic nuisance property. After this designation, the property owner/operator will be notified and be required to develop a course of action to abate the nuisance activities that local police approve. If the owner/operator fails to meet this requirement, the property's case will be referred to the City Attorney and the City's Police Commissioner. Notice must be provided once this referral is made. After the referral, the owner/operator of the property will have 60 days to reach an agreement on a course of action to abate nuisance activities. An important note is that an owner/operator's response does not constitute an admission that the nuisance activities have occurred.<sup>71</sup>

### **Penalties for Chronic Nuisance Properties**

After 60 days of continued nuisance activities, the Portland City Attorney may commence legal proceedings to impose civil penalties against the owner/operator, abate nuisance activity, and seek closure. When the court determines a property to be a chronic nuisance as defined by the city charter and code, the court shall order the property be closed for a mandatory period between six months and one year. Civil penalties can be imposed on the owner/operator of up to \$100 for every day that nuisance activities were proven to have occurred on the property after the initial notice was given by the city, or the amount equal to the cost to the city for abating the nuisance activities. Whichever is greater, the \$100 per day or the cost to the city for abatement, will be imposed on the owner/operator.<sup>72</sup>

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<sup>71</sup> Ibid.

<sup>72</sup> Ibid. "Chapter 14B.60 Chronic Nuisance Property: 14B.60.040 Commencement of Actions; Remedies; Burden of Proof."

Chronic nuisance abatement codes like Portland's code are beneficial because they hold property owners responsible for the crime occurring in and around their properties. Property owners must work to abate such activities and reimburse the city for the costs associated with policing these areas if nuisance activity continues. Applying such a code would benefit cities in Georgia.

### **Recommendations for Georgia: Adopt a Chronic Nuisance Property Code**

The Pink Pony case in Brookhaven exemplifies that improvements can be made in the way that cities in Georgia try to regulate adult entertainment establishments. Local residents are left unsatisfied, fearing a reduction in property values, increase in traffic, and increase in criminal activity, as the Pink Pony continues activity as usual. Politicians "look bad" as the strip club is allowed to continue its ostensibly illegal activity, buying temporary immunity from the nude dancing/alcohol restrictions.

Of Brookhaven's four city council members, Rebecca Williams was the only one to vote against the agreement. Williams told the press that "It's a very bad deal for the city of Brookhaven. Asking a company to pay \$225,000 to a city for the right of ignoring our laws is just bad business, probably unethical and smells of a payoff to me."<sup>73</sup> In fact, Michael Galardi, a member of the Pink Pony owner's family, is serving time in federal prison for bribing council members in Las Vegas and San Diego to vote down similar ordinances to Brookhaven. The bribes totaled \$200,000.<sup>74</sup>

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<sup>73</sup> Ibid.

<sup>74</sup> Milligan, Mandy. Nov. 5, 2014. "Brookhaven and Pink Pony strike nude-dancing deal." CBS46. <http://www.cbs46.com/story/27282854/pink-pony-to-stay-open-in-brookhaven>.



Council member Williams is unsatisfied with other terms of the agreement. For example, the Pink Pony has agreed in the settlement to “self report” any violations related to touching or fondling that occur in the establishment.<sup>75</sup> Additionally, the transition period of six years is far too long. Usually a business needs 60 to 90 days to comply with the law.

Fortunately for cities like Brookhaven, there is a more effective way to regulate these establishments. By comparing the ways in which cities in Georgia and Oregon regulate strip clubs, it is clear that Portland’s chronic nuisance abatement code is more effective at controlling crime than Atlanta’s method of placing buffers around strip clubs. The benefit of a chronic nuisance abatement code is that it directly addresses secondary effects specific to each individual property. The code allows cities to punish properties found to be the cause of crime, while allowing well-run establishments to continue to produce positive economic impacts for local communities.

If employed in Georgia, state law will define nuisance activities under the code. Any property found to have nuisance activity in or near it can be shut down after continued noncompliance. The Pink Pony case illustrates the revenues that these establishments are generating. If nuisance activities occur, these establishments can employ their own financial resources to monitor their establishments and the area they are responsible for around the business (in Portland this is 200 feet).<sup>76</sup>

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<sup>75</sup> Ibid.

<sup>76</sup> City of Portland Charter, Code and Policies. Chapter 14B.60 Chronic Nuisance Property: 14B.60.030 Procedure. 2016. <https://www.portlandoregon.gov/citycode/?c=28531>.

### **Modification of Article III, Section VI, Paragraph VII**

This article of the Georgia Constitution of 1983 states,

This regulatory authority of the state shall include all such regulatory authority as is permitted to the states under the Twenty-First Amendment to the United States Constitution. This regulatory authority of the state is specifically delegated to the counties and municipalities of the state for the purpose of regulating, restricting, or prohibiting the exhibition of nudity, partial nudity, or depictions of nudity in connection with the sale or consumption of alcoholic beverages.<sup>77</sup>

This restriction can only be seen as a legitimate regulation if it is proven that the sale of alcohol in strip clubs increases crime rates compared to those establishments selling alcohol that do not have nude dancing (bars, nightclubs, etc.). If there is no statistically significant difference in crime, then this restriction is discriminatory against strip clubs and threatens their profitability without any evidence-based justification.

The argument put forward in *Goldrush II v. Marietta* was that bad secondary effects occur when alcohol and live nude dancing are mixed. By adopting a chronic nuisance property code, clubs can continue to earn the revenue from selling alcohol. However, the onus is put on the clubs to abate any secondary effects when alcohol and nude dancing are mixed.

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<sup>77</sup> Georgia Constitution. Of 1983, Article III, Section VI, Paragraph VII.

## Conclusion

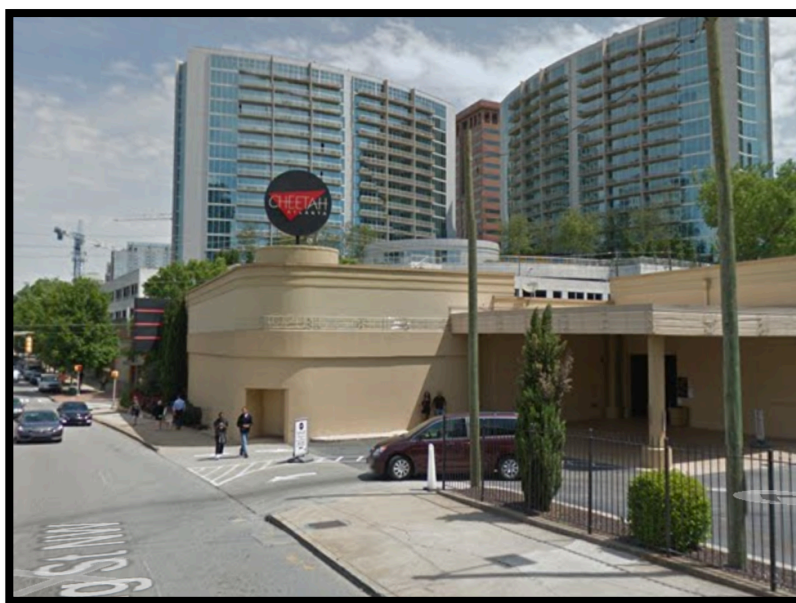
Planners and cities aim to improve the living environments for all residents in their respective localities. A tension exists between strip clubs' First Amendment right to free speech and planners' and cities' desire to prevent crime-related secondary effects. Adopting a chronic nuisance property code to regulate these establishments should not be viewed as an effort to close down all establishments. These codes allow planners and cities to distinguish between poorly run, unsafe establishments and professionally operated, safe establishments with positive economic impacts for the local community.

Clubs can fit into the urban fabric of local communities without sticking out like a sore thumb. Take for example Cheetah, which is located in Midtown Atlanta. Midtown was recently named by the American Planning Association as one of the five great places to live in 2016. The neighborhood was picked because of new planning initiatives, its colorful history and vibrant cultural scene, and walkability. According to Midtown Alliance, 82% of people who live and work in Midtown agree that they feel a strong sense of community. Midtown is growing rapidly. There are currently 20 construction projects underway and another 20 proposed. In the past 18 months, more than 8,000 jobs have been added and more than 5,500 residential units have been added or are under construction.<sup>78</sup>

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<sup>78</sup> Hensley, Ellie. October 3, 2016. Which Atlanta neighborhood is ranked one of five "Great Places" in the country? Atlanta Business Chronicle.

### Cheetah in Midtown Atlanta



One can walk right past the club, like the people in the photo, without even realizing what type of business it is. The club is located across the street from a Publix, frequented by people and families. Just south of the club on Spring Street is Tech Square, which contains Georgia Tech academic buildings, retail shops, condominiums, office buildings, restaurants, and a hotel. Across the street, the financial technology company, NCR, is currently constructing its new headquarters. The firm announced that this will add 1,800 new jobs in Midtown on top of the 3,600 jobs it is moving from Gwinnett.<sup>79</sup>

Cheetah serves as an example of adult entertainment done right. The business blends in with the surrounding architecture. Additionally, new development around the club indicates that companies, grocery stores, and schools do not view the club as a nuisance. Rather, the club is a part of the Midtown community.

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<sup>79</sup> Trubey, Scott. October 18, 2016. "HQ incentive package for NCR could rise by \$45 million." AJC.